(3)

cf 25/1-b CANCELLED

IN THE HIGH COURT OF MADHYA PRADESH SAT JABALPUR

.....

WRIT PETITION NO. 1168 /95

PETITIONERS : 1. State of Madhya Pradesh, through Divisional Forest Officer, Koria Production Division, Manendragarh, Distt.Sarguja.

- VERSUS -

RESPONDENTS : 1. The Deputy Labour Commissioner, Chhatisgarh Region, Raipur.

2. The Presiding Officer, Labour Court, Bilaspur.

3. Ganesh Prasad Prajapati, Ex-Driver, Forest Department, Koria Production Division, Manendragarh, Distt.Sarguja.

3938
Filed on 9/12/95
by Shri A/c Ichhadhari
.....Advocate

R.b D.R.
Dt. 9/12

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

(77)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 1168 of 1995

Petitioner : State of Madhya Pradesh

Versus

Respondents : The Deputy Labour Commissioner & others

Shri Satish Gupta, Deputy Government Advocate for the petitioner.

None appears for the respondent No. 3.

ORDER

(17th November, 2006)

1. The employee/respondent No. 3 was appointed as Jeep Driver on temporary basis, by order dated 29.9.1988 (Annexure/C), with a condition that the appointment would be effective till 15.11.1988. It was further prescribed that the appointment of the petitioner was purely temporary and could be terminated at any time. On the basis of this order, the services of the respondent No. 3/employee came to an end on 16.11.1988.

2. Being aggrieved, the respondent No. 3/employee preferred an application before the Labour Court, Bilaspur. The Labour Court, after hearing both the parties, came to the conclusion, on the basis of certain depositions, not on the basis of any documentary evidence, that the petitioner had worked from 1.11.1986 to 15.11.1988 for more than 240 days.

(78)

3. Learned counsel for the petitioner submits that the award of the Labour Court, impugned herein, is perverse, as the employee ought to have worked 240 days in a year preceding the date of termination.

4. After hearing learned counsel for the petitioner and perusing the records, I am of the considered opinion that the Labour Court has come to the conclusion on the basis of his working from 1.11.1986 to 15.11.1988 that he had worked for more than 240 days. The finding is erroneous and deserves to be quashed. The second finding that the petitioner herein has not complied with the provision of Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act, 1947"), is also not sustainable. In the event, if it is not established that the respondent No. 3 had worked 240 days in a year preceding to the date of retrenchment/termination, the employee is not entitled to take benefit of Section 25-F of the Act, 1947.

5. The Constitutional Bench of the Supreme Court in the case of **Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others**[1] held that the temporary employees appointed/recruited de-hors the constitutional scheme or not in accordance with rules and other statutory provisions framed under proviso to Article 309 of the Constitution of India without inviting applications from all the eligible candidates, the employee appointment on temporary basis, is not entitled to any protection i.e. continuation/absorption or regularization on the basis of continuous employment for a long period. It was later on followed by the Supreme Court in several decisions, some of them are

Mineral Exploration Corpn. Employees' Union Vs. Mineral Exploration Corpn. Ltd. and another[2], Accounts Officer (A&I) A.P. SRTC and Others Vs. P. Chandra Sekhara Rao and Others[3], Surinder Prasad Tiwari Vs. U.P. Rajya Krishi Utpadan Mandi Parishad and Others[4].

6. For the reasons-stated above, the impugned award dated 22.10.94 (Annexure/A) is quashed and this petition is allowed. In the meantime, if, the respondent No. 3/employee has worked and has been paid wages for his work after the award is passed or any amount whatsoever paid to the respondent No. 3/employee shall not be refundable to the petitioner.

7. In the facts and circumstances, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu

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[1]{(2006) 4 SCC 1}
[2]{(2006) 6 SCC 310}
[3]{(2006) 7 SCC 488}
[4]{(2006) 7 SCC 684}